

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

DR. WILLIAM HORNER,

Plaintiff,

v.

BAYER AG and BAYER CROPSCIENCE
HOLDING INC.,

Defendants.

4:21-cv- 4152

COMPLAINT AND DEMAND
FOR JURY TRIAL

Plaintiff Dr. William Horner, through his counsel, for his Complaint and Demand for Jury Trial against Defendants Bayer AG and Bayer CropScience Holding Inc., states:

Opening Statement

Dr. Horner was a 30-year user of Roundup, an herbicide containing glyphosate. In January 2021, Dr. William Horner was diagnosed with diffused large B-cell non-Hodgkin lymphoma, subtype S. This case is about compensating Dr. Horner for that disease and received medical treatment as a result of the manufacturing, distributing, marketing, and selling of a product that was known to probably be cancerous, to countless Americans, including Dr. Horner.

Parties

1. Plaintiff Dr. William Horner is, and at all relevant times was, a resident of Brandon, Minnehaha County, South Dakota.
2. Defendant Bayer AG (“Bayer AG”) is a German corporation and purchaser of Monsanto Company, Inc. (“Monsanto”), including its liabilities related to Roundup.
3. Defendant Bayer CropScience Holding Inc. (“Bayer Crop”), a wholly owned subsidiary of Bayer AG, is a Delaware Corporation with its principal place business in Saint Louis,

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Missouri, that, based upon information and belief, manufactured, labeled, marketed, and distributed Roundup following Bayer AG's purchase of Monsanto.

Jurisdiction and Venue

4. This Court has jurisdiction under 28 U.S.C. § 1332, diversity of citizenship.
5. The damages at issue exceed \$75,000.
6. This Court is the proper venue under 28 U.S.C. § 1331(b)(2).

Background and Facts

7. In 1970, Monsanto discovered the herbicidal properties of glyphosate and began marketing it in products in 1974 under the brand name Roundup.
8. Roundup is a non-selective herbicide used to kill weeds.
9. Monsanto was the world's leading producer of glyphosate.
10. Monsanto's glyphosate products were registered in 130 countries and approved for use on over 100 different crops. Numerous studies establish that glyphosate is found in rivers, streams, and groundwater in agricultural areas where Roundup is used. It has been found in food, in the urine of agricultural workers, and even in the urine of people who are not in direct contact with glyphosate.
11. On July 29, 2015, the International Agency for Research on Cancer ("IARC"), a World Health Organization ("WHO"), issued a formal monograph that classified glyphosate as a Group 2A herbicide, which means that it is probably carcinogenic to humans. The cancers most associated with glyphosate exposure are non-Hodgkin lymphoma and other hematopoietic cancers.
12. The IARC's conclusions confirmed that glyphosate is toxic to humans.

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13. Glyphosate is toxic to humans.

14. Glyphosate is carcinogenic to humans.

15. Glyphosate causes non-Hodgkin lymphoma and other hematopoietic cancers.

16. Bayer Ag purchased Monsanto, and any and all of the rights associated with the manufacturing, distributing, and marketing of Roundup, after the July 29, 2015 IARC's formal monograph that classified glyphosate as a Group 2A herbicide (probably carcinogenic to humans).

17. Bayer Crop is a wholly owned subsidiary of Bayer Ag and oversees the manufacturing, labeling, marketing, and distribution of Roundup.

18. Bayer Ag and Bayer Crop knew about the July 29, 2015 IARC's formal monograph that classified glyphosate as a Group 2A herbicide (probably carcinogenic to humans).

19. Bayer Ag and Bayer Crop knew, or should have known, that Roundup was toxic to humans before Monsanto was purchased.

20. Bayer Ag and Bayer Crop knew, or should have known, that Roundup was carcinogenic to humans before Monsanto was purchased.

21. Bayer Ag and Bayer Crop knew, or should have known, that Roundup causes non-Hodgkin lymphoma and other hematopoietic cancers before Monsanto was purchased.

22. Monsanto, Bayer Ag, and Bayer Crop represented Roundup as safe to humans and the environment, including, but not limited to, proclaiming to the world, and, particularly, to United States consumers, that glyphosate-based herbicides, including Roundup, create no unreasonable risks to human health or to the environment.

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FACTS SPECIFIC TO THIS CASE

23. Dr. Horner has owned and lived on an acreage in South Dakota since 1983.
24. Dr. Horner sprayed Roundup regularly throughout his acreage to control weeds.
25. In January 2021, Dr. Horner was diagnosed with diffused large B-cell non-Hodgkin lymphoma, subtype S.
26. Dr. Horner has endured substantial pain and suffering as a result of the non-Hodgkin lymphoma disease.
27. Dr. Horner has suffered, and will continue to suffer, severe and permanent physical injuries as a result of the non-Hodgkin lymphoma disease.
28. Dr. Horner has undergone, and will continue to undergo, extensive medical treatments to combat the non-Hodgkin lymphoma disease.
29. Dr. Horner has incurred, and will continue to incur, significant expenses for medical care and treatment as a result of the non-Hodgkin lymphoma disease.
30. Dr. Horner has suffered, and will continue to suffer, emotional distress as a result of the non-Hodgkin lymphoma disease.

Count 1
(Manufacturer-Seller Liability (Strict))

31. Dr. Horner restates the preceding paragraphs of this Complaint as though fully set forth herein.
32. Bayer Ag's and Bayer Crop's Roundup was in a defective condition, which made it unreasonably dangerous to humans, including Dr. Horner.
33. The defect existed at the time Bayer Ag and Bayer Crop distributed and sold Roundup.

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34. Roundup was expected by Bayer Ag and Bayer Crop to reach the general public, including homeowners with lawns and/or acreages like Dr. Horner.

35. Roundup did, in fact, reach the general public, including homeowners with lawns and/or acreages like Dr. Horner, without substantial unforeseeable change in the condition Roundup was in when it left Bayer Ag's and Bayer Crop's control.

36. The defective condition of Roundup caused Dr. Horner's diffused large B-cell non-Hodgkin lymphoma, subtype S disease.

Count 2
(Failure to Warn)

37. Dr. Horner restates the preceding paragraphs of this Complaint as though fully set forth herein.

38. At all relevant times, there was a danger of causing cancer in humans with the foreseeable use of Roundup.

39. Bayer Ag and Bayer Crop provided an inadequate warning of the danger of Roundup causing cancer by using Roundup.

40. As a result of the inadequate warning, Roundup was rendered defective and unreasonably dangerous.

41. The defective and unreasonably dangerous condition existed at the time the Roundup left Bayer Ag's and Bayer Crop's control.

42. Roundup was expected by Bayer Ag and Bayer Crop to reach the general public, including homeowners with lawns and/or acreages like Dr. Horner.

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43. Roundup did, in fact, reach the general public, including homeowners with lawns and/or acreages like Dr. Horner, without substantial unforeseeable change in the condition Roundup was in when it left Bayer Ag's and Bayer Crop's control.

44. The defective condition of Roundup caused Dr. Horner's diffused large B-cell non-Hodgkin lymphoma, subtype S disease.

Count 3
(Negligence)

45. Dr. Horner restates the preceding paragraphs of this Complaint as though fully set forth herein.

46. Bayer Ag and Bayer Crop, directly or indirectly, caused Roundup to be sold, distributed, packaged, labeled, marketed, promoted, and/or used by homeowners with lawns and/or acreages, including Dr. Horner.

47. Bayer Ag and Bayer Crop had a duty to use the amount of care in the manufacturing, testing, researching, marketing, advertising, promoting, packaging, distributing, and selling of Roundup that a reasonably careful manufacturer would use in similar circumstances to avoid exposing others to a foreseeable risk of harm.

48. Bayer Ag and Bayer Crop breached that duty by continuing to manufacture, market, advertise, promote, package, distribute, and sell Roundup as it did following the purchase of Monsanto, which included the rights to Roundup.

49. Bayer Ag and Bayer Crop also breached that duty by failing to give adequate warning of known or reasonably anticipated dangers, such as causing cancer, with the use of Roundup

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because injury to a user could be reasonably anticipated if an adequate warning was not given for a reasonably foreseeable use of the product.

50. At all times relevant to this litigation, Bayer Ag and Bayer Crop knew, or should have known, of the hazards and dangers of Roundup and, specifically, the carcinogenic properties of glyphosate.

51. Bayer Ag and Bayer Crop knew or, in the exercise of reasonable care, should have known that the use of, or exposure to, Roundup could cause or be associated with cancer and thus created a dangerous and unreasonable risk of injury to the users of Roundup, including Dr. Horner.

52. Despite the knowledge of glyphosate's carcinogenic properties, and the ability to investigate, study, and test Roundup and to provide adequate warnings, Bayer Ag and Bayer Crop failed to do so.

53. In fact, Bayer Ag and Bayer Crop wrongfully concealed information and made false and/or misleading statements concerning the safety of Roundup.

54. Bayer Ag's and Bayer Crop's negligence included:

- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing Roundup without thorough and adequate pre-and post-market testing;
- b. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing Roundup while negligently and/or intentionally concealing and failing to disclose the results of trials, tests, and studies of exposure to glyphosate, and the risk of serious harm to humans as a result of the use and exposure to Roundup;
- c. Failing to use reasonable and prudent care in the design, research, manufacture, and development of Roundup products so as to avoid the risk of serious harm associated with the use of Roundup;

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- d. Failing to design and manufacture Roundup so as to ensure that it was at least as safe and effective as other herbicides in the market;
- e. Failing to provide adequate instructions, guidelines, and safety precautions to those who Bayer Ag and Bayer Crop could reasonably foresee would use and be exposed to Roundup;
- f. Failing to warn consumers, including Dr. Horner, that the use of and exposure to Roundup presented sever risks of cancer and other grave illnesses;
- g. Failing to warn consumers, including Dr. Horner, that Roundup's risk of harm was unreasonable and that there were safe and effective alternative herbicides available;
- h. Systematically suppressing or downplaying evidence about the risks, incidence, and prevalence of the dangers of Roundup and glyphosate;
- i. Representing that Roundup was safe for its intended use when, in fact, Bayer Ag and Bayer Crop knew or should have known that Roundup was not safe for its intended purpose;
- j. Refusing or declining to make or propose any changes to Roundup's labeling or other promotional materials that would alert consumers, including Dr. Horner, of the risks of Roundup and glyphosate;
- k. Advertising, marketing, and recommending the use of Roundup, while concealing and failing to disclose or warn of the dangers known by Bayer Ag and Bayer Crop to be associated with or caused by the use of or exposure to Roundup and glyphosate; and
- l. Continuing the manufacture and sale of Roundup with the knowledge that Roundup was unreasonably unsafe and dangerous.

55. Bayer Ag's and Bayer Crop's conduct, as described in this Complaint, was reckless.

Bayer Ag and Bayer Crop regularly risked the lives of consumers and users of Roundup, including Dr. Horner, while knowing of the dangers of glyphosate.

56. Bayer Ag and Bayer Crop made conscious decisions not to redesign, relabel, warn, or inform the public, including homeowners with lawns and/or acreages, including Dr. Horner.

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57. Roundup was expected by Bayer Ag and Bayer Crop to reach the general public, including homeowners with lawns and/or acreages like Dr. Horner.

58. Roundup did in fact reach the general public, including homeowners with lawns and/or acreages like Dr. Horner, without substantial unforeseeable change in the condition the Roundup was in when it left Bayer Ag's and Bayer Crop's control.

59. Roundup caused Dr. Horner's diffused large B-cell non-Hodgkin lymphoma, subtype S disease.

Count 4
(Punitive Damages)

60. Dr. Horner restates the preceding paragraphs of this Complaint as though fully set forth herein.

61. Bayer Ag and Bayer Crop acted with oppression, fraud, and/or malice, as established in this Complaint, and punitive damages are necessary and appropriate in order to punish and deter.

Requested Relief

Dr. Horner requests the following relief:

1. Enter judgment in Dr. Horner's favor.
2. Award Dr. Horner compensatory damages, plus pre-judgment interest thereon.
3. Award attorneys' fees and other costs as allowed by law.
4. Award punitive damages as allowed by law.
5. Grant such other further relief as the Court deems appropriate.

Demand for Jury Trial

Dr. Horner respectfully demands a trial by jury on all issues so triable.

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Dated: September 1, 2021.

FULLER, WILLIAMSON, NELSEN
& PREHEIM, LLP


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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS DR. WILLIAM HORNER	DEFENDANTS BAYER AG and BAYER CROPSCIENCE HOLDING INC.		
(b) County of Residence of First Listed Plaintiff <u>Minnehaha County, SD</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Germany</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (<i>If Known</i>)		
(c) Attorneys (<i>Firm Name, Address, and Telephone Number</i>) Derek A. Nelsen and Eric T. Preheim Fuller & Williamson, LLP, 7521 S. Louise Ave., Sioux Falls, SD 57108 (605) 333-0003			
II. BASIS OF JURISDICTION (<i>Place an "X" in One Box Only</i>)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>		
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>		
III. CITIZENSHIP OF PRINCIPAL PARTIES (<i>Place an "X" in One Box for Plaintiff and One Box for Defendant</i>)			
(For Diversity Cases Only)			
Citizen of This State	PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (*Place an "X" in One Box Only*)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (*Place an "X" in One Box Only*)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):
28 U.S.C. 1332

VI. CAUSE OF ACTION

Brief description of cause:
 Plaintiff alleges personal injuries and damages following the use of Defendants' product(s).

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMANDS** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (*See instructions*): **JUDGE** **DOCKET NUMBER**

DATE **SIGNATURE OF ATTORNEY OF RECORD**
 09/01/2021 *Derek A. Nelsen*

FOR OFFICE USE ONLY

RECEIPT # **AMOUNT** **APPLYING IFF** **JUDGE** **MAG. JUDGE**